UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VOLVO GROUP NORTH AMERICA, LLC

and **Cases 15-CA-179071**
15-CA-184912
WALTER EVANS **15-CA-195183**

ORDER[1]

The Respondent's Motion to Dismiss the Second Consolidated Complaint is denied. The Respondent has failed to establish that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. This denial is without prejudice to the Respondent's right to renew its arguments to the administrative law judge, after presenting evidence, and to raise the deferral issue before the Board on any exceptions that may be filed to the judge's decision, if appropriate, including its arguments regarding the appropriate standard for deferral.[2]

Dated, Washington, D.C., February 6, 2018.

MARVIN E. KAPLAN, CHAIRMAN

WILLIAM J. EMANUEL, MEMBER

MEMBER MARK GASTON PEARCE, concurring in part, dissenting in part.

Although I agree with my colleagues' denial of the Respondent's Motion to Dismiss, I would dismiss the motion categorically. The Respondent argues in its motion

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.
[2] Our dissenting colleague cites no precedent, and we are not aware of any, that would give the denial of the Respondent's motion the preclusive effect he advocates.

that the Board should defer the Section 8(a)(3) suspension and discharge allegations to the arbitration award. Under extant law, the Respondent's argument lacks merit. First, the arbitration award to which the Respondent seeks deferral clearly fails to meet the applicable requirements for deferring the Section 8(a)(3) allegations. *Babcock & Wilcox*, 361 NLRB 1127 (2014). Even the Respondent acknowledges that, under *Babcock & Wilcox*, deferral is not warranted.

Second, the complaint alleges that the Respondent independently violated Section 8(a)(1) by suspending and discharging Charging Party Walter Evans in May 2016, and Section 8(a)(4) by terminating Evans in March 2017 because he filed charges against the Respondent in Cases 15-CA-179071 and 15-CA-184912. The Board has long held that Section 8(a)(1) and Section 8(a)(4) allegations, like these, are not suitable for deferral. See e.g. *Chrysler Corp*., 242 NLRB 577, 580 (1979) (inasmuch as discharge allegedly rose out of protected concerted activity in violation of 8(a)(1), deferral is not appropriate); *United States Steel Corp*., 264 NLRB 76, 81 fn. 11 (1982) ("It is well established that the Board will not apply the *Spielberg* deferral doctrine to issues involving access to the Board's processes as protected by Sec. 8(a)(4) of the Act."). Because the 8(a)(3) allegations that the Respondent seeks to dismiss are intertwined with the nondeferrable independent 8(a)(1) and 8(a)(4) allegations deferral is inappropriate. See generally, *Hoffman Air & Filter Systems*, 312 NLRB 349, 353 fn. 19 (1993).

Accordingly, I would deny the Respondent's motion to dismiss categorically.

Dated, Washington, D.C., February 5, 2018.

MARK GASTON PEARCE, MEMBER